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MEDIA, INC., and JOSE DAVID HERNANDEZ

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a California
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

Case No.: 1:20-cv-00988-JLT-BAM

**STATEMENT OF UNDISPUTED
FACTS CONCERNING
PLAINTIFF AND
COUNTERDEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

[F. R. Civ. Pro. 57, L.R. 260]

Judge: Jennifer L. Thurston

Date: July 14, 2023

Time: 9:00 a.m.

Courtroom: Courtroom 4, 7th floor

HYPHY MUSIC, INC.,

Counterclaimant,

v.

YELLOWCAKE, INC., A CALIFORNIA
CORPORATION; COLONIZE MEDIA,
INC.; JOSE DAVID HERNANDEZ; and
JESUS CHAVEZ SR,

Counterdefendants.

In accordance with Local Rule 56-260(a) of this Court, Plaintiff/Counterdefendants submit the following statement of undisputed facts with references to the supporting evidence.

	Plaintiff/Counterdefendants' <u>Undisputed Facts</u>	Evidence in Support of Plaintiff/Counterdefendants' <u>Undisputed Facts</u>
1	Jesus Chavez Sr. ("Chavez") is the founder of the band Los Originales de San Juan (the "Band").	Dkt. 46-2 , ¶ 3-4.
2	Chavez was always the bandleader, principal performer, principal songwriter of the Band.	Dkt. 46-2 , ¶ 3-4.
3	Chavez owned all intellectual property produced by the Band including all copyrights in its sound recordings and trademarks.	Dkt. 46-2 , ¶ 3-4.
4	2013 and 2015, Chavez, recording under the moniker Los Originales de San Juan, recorded six albums titled: (i) <i>Los Originales de San Juan- "El Campesino"</i> ; (ii) <i>Los Originales de</i>	Dkt. 46-2 , ¶ 7

1		<i>San Juan- “Corridos de Poca M”</i> ; (iii) <i>Los</i>	
2		<i>Originales de San Juan- “En Vivo Desde La</i>	
3		<i>Cantina de Mi Barrio”</i> ; (iv) <i>Los Originales de</i>	
4		<i>San Juan- “Nuestra Historia En Vivo”</i> ; (v) <i>Los</i>	
5		<i>Originales de San Juan- “Amigos y</i>	
6		<i>Contrarios”</i> ; and (vi) <i>Los Originales de San</i>	
7		<i>Juan- “Naci Con Suerte de Rey Con Mariachi”</i>	
8		(collectively “Albums”).	
9	5	Hector Omar Rosales (“Rosales”) acted as the	Rosales Dec. Dkt. 46-1 , ¶ 5;
10		audio engineer for four (4) of the Albums	Chavez Dec Dkt. 46-2 , ¶ 11.
11		recorded in his studio.	
12	6	Chavez was the sole producer of the Albums	Rosales Dec. Dkt. 46-1 , ¶ 9;
13		and no employee or anybody else affiliated	Chavez Dec. Dkt. 46-2 , ¶ 8.
14		with Morena produced any songs on the	
15		Albums or provided any original creative input	
16		into the recording of the Albums.	
17	7	At no time during their recording or	Chavez Dec. Dkt. 46-2 ,
18		subsequent existence were there any other co-	¶¶ 8-19.
19		owners of the Copyrighted sound recordings in	
20		the albums besides Chavez.	
21	8	Martinez is the chief executive officer and	See Martinez Trans, Pg. 12,
22		owner of Hyphy Music, Inc.	Lns. 4-5.
23			
24	9	In or around February 2013, Chavez and	Chavez Dec., Dkt. 46-2 ,
25		Hyphy entered into an <i>oral distribution</i>	Hyphy’s Counterclaims,
26		<i>agreement</i> for the Albums to be <i>recorded by</i>	Dkt. 7 , ¶ 16; and First
27		<i>Chavez</i> under the name Los Originales de San	Amended Counterclaim,
28			Dkt. 15 , ¶ 16; Opposition to

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1		Juan and distributed by Hyphy (“Hyphy Distribution Agreement”).	Motion to Dismiss, Dkt. 27 , Pg. 2 Lns. 1-5.
2			
3	10	Moreover, Hyphy claimed on multiple occasions that it had allegedly “commissioned” Chavez, <i>and Chavez alone</i> , to record the Albums.	Hyphy’s Counterclaims, Dkt. 7 , ¶ 16; Hyphy’s Amended Counterclaims, Dkt. 15 , ¶ 16; Defendant’s Opposition to Plaintiff-Counterdefendants’ Motion to Dismiss Defendant-Counterclaimant’s Counterclaims Dkt. 27 , Pg. 1, Ln. 27-Pg. 2, Ln. 5; Hyphy’s Reply to Counterdefendants’ Challenge to The Validity of Certain Copyright Registrations Dkt. 45 , Pg. 1, Lns. 16-18; Declaration of Jose Martinez in Support of Reply to Counterdefendants’ Challenge to the Validity of Certain Copyright Registrations , Dkt. 45-1 , Pg. 1, Lns. 8-16.
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27	11	Chavez had no intent to transfer any ownership interest in the Albums to Hyphy nor is there	Chavez Dec. Dkt. 46-2 , ¶ 14.
28			

1		any evidence in the record to suggest that he	
2		did.	
3	12	Jose Martinez, as a sophisticated music	Pg. 114, Ln. 25- Pg. 115,
4		business executive, testified that he	Lns. 1-3 of the Deposition
5		intentionally entered into an oral-only	Transcript of Jose Martinez
6		agreement with to distribute the Albums.	
7	13	Plaintiff Yellowcake, Inc. (“Yellowcake”) is	Kevin Berger Declaration, ¶
8		primarily engaged in the business of exploiting	2
9		various intellectual property rights.	
10	14	Colonize is a company engaged in the business	Berger Dec., ¶ 13
11		of digital music distribution and distributes the	
12		Albums on behalf of Yellowcake.	
13	15	Counter-defendant Jose David Hernandez	Hernandez Dec., ¶ 1.
14		(“Hernandez”) is a principal of Colonize.	
15	16	On or about March 21, 2019, Yellowcake and	Berger Dec., ¶ 9.
16		Chavez entered into an Asset Purchase and	
17		Assignment Agreement (“APA Agreement”),	
18		whereby Yellowcake purchased Chavez’s	
19		entire ownership of the rights, title and	
20		interests in the sound recordings which	
21		comprised the works of Los Originales De San	
22		Juan, including the Albums.	
23	17	In the APA, Chavez represented that he owned	Berman Dec. <u>Exh. “B”</u> ¶
24		all rights transferred to Yellowcake therein.	13(e).
25			
26	18	Prior to entering into the APA, Yellowcake did	Berger Dec., ¶¶ 7-8
27		due diligence and searched the United States	
28		Copyright Office (“USCO”) to determine	

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1	whether there were any potential competing	
2	copyright registrations filed for the Albums	
3	and found none, <i>because there were none.</i>	
4	19 Following its execution of the APA	Dkt. 1 , Exh. “A”
5	Agreement, Yellowcake complied with all	
6	requirements set forth by the Copyright Act,	
7	17 U.S.C. § 101, <i>et seq.</i> , by registering	
8	copyrights for each sound recording acquired	
9	by the APA Agreement in addition to	
10	recording the APA with the USCO.	
11	20 Sometime after execution of the APA	Complaint, Dkt. 1 , Exh.
12	Agreement and the issuance of the copyright	“A”, ¶ 1. Berger Dec. at ¶
13	registrations by the USCO, Yellowcake	18.
14	learned that Morena had been distributing	
15	copies of songs on the Albums and created	
16	and/or uploaded videos containing	
17	unauthorized derivative works of songs on the	
18	Albums to www.YouTube.com when Colonize	
19	found that YouTube was reporting “conflicts”	
20	between Yellowcake and Morena because both	
21	were distributing videos with the same sound	
22	recordings on the Albums.	
23	21 This Court already took judicial notice of	Dkt. 42 , Pg. 5, fn. 1.
24	Yellowcake’s copyright registrations in the	
25	Albums in its prior Order dated March 1,	
26	2021.	
27	22 Shortly thereafter, in or about June 2020,	Berman Dec. <u>Exh. “C”</u> .
28	Yellowcake filed “Takedown Notices”	

1		pursuant to 17 U.S.C. § 512 <i>et seq.</i> through	
2		YouTube claiming ownership of the songs and	
3		notified Hyphy’s distributor, The Orchard, that	
4		Hyphy was infringing Yellowcake’s	
5		copyrighted Albums.	
6	23	Hyphy completely disregarded these	Hyphy’s royalty reports
7		notices and continued to exploit the	extending to 2022 annexed
8		copyrighted Albums, including but not limited	to Berman Dec. as <u>Exh.</u>
9		to selling and streaming them on multiple	<u>“D”</u> .
10		digital service providers like Spotify, Apple	
11		Music, iTunes and Amazon Music, even after	
12		Yellowcake filed this lawsuit. As such,	
13		Yellowcake was required under 17 U.S.C. §	
14		512 <i>et seq.</i> and YouTube’s protocols to file	
15		this action to protect its rights and prevent	
16		further conflicts with the digital service	
17		providers.	
18			
19	24	Hyphy admitted to receiving the following	Berman Dec. <u>Exh. “E”</u> ,
20		gross amounts for the exploitation of each	Response 2(vii) and 4(iii)
21		Album:	
22		(i) “ <i>El Campesino</i> ,” – approximately \$20,000;	
23		(ii) “ <i>Des de la Cantina de Mi Barrio</i> ,” –	
24		approximately \$20,000;	
25		(iii) “ <i>Nuestra Historia en Vivo</i> ,” –	
26		approximately \$20,000;	
27		(iv) “ <i>Corridos de Poca M</i> ,” – approximately	
28		\$20,000;	

(v) “*Amigos y Contrarios*” – approximately \$20,000; and
(vi) “*Naci Con Suerte de Rey (Mariachi)*” – approximately \$20,000.

Dated: July 14, 2023

Respectfully submitted,

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By: /s/ Seth L. Berman
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Jose David Hernandez*

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system on this 14th day of July 2023, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those that are indicated as non- registered participants, if any.

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